

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:)	Docket HWCA
Safe-Way Chemical Company,)	CONSENT ORDER
a California general)	
partnership, aka Safe-Way)	
Chemical Company, Inc.)	
)	
664 Stockton Avenue Unit G)	
San Jose, California 95126)	Health and Safety Code
ID No. CAD 042345884;)	Section 25187
)	
Z. Max Lambrecht,)	
individually and dba)	
Safe-Way Chemical Company,)	
and as a general partner of)	
Safe-Way Chemical Company; and)	
)	
Zack Lambrecht,)	
individually and dba)	
Safe-Way Chemical Company,)	
and as a general partner)	
Safe-Way Chemical Company,)	
)	
Respondents.)	
)	

The California Department of Toxic Substances Control (Department) and Safe-Way Chemical Company, a California general partnership, aka Safe-Way Chemical Company, Inc.; Z. Max Lambrecht, individually and dba Safe-Way Chemical Company, and as a general partner of Safe-Way Chemical Company; and, Zack Lambrecht, individually and dba Safe-Way Chemical Company, and as a general partner of Safe-Way Chemical Company (jointly and individually referred to as Respondents) enter into this Consent Order and agree as follows:

1. Respondents generate, handle, treat, transport, store, and/or dispose of hazardous waste at the following site: 664 Stockton Avenue, San Jose, California 95126 (Site).

(a) The Department authorized Respondents to manage hazardous waste by a Series B Standardized Hazardous Waste Facility Permit (the "Permit"), issued on December 19, 1997.

(b) The Department registered Respondents as an authorized hazardous waste transporter (Registration Number 1245) on July 31, 1998. The registration was renewed on July 30, 1999 and expired on July 31, 2000. Respondents renewed their registration on April 22, 2002. During the period between July 31, 2000, and April 22, 2002, Respondents were not a registered hazardous waste transporter.

2. The Department inspected the Site on May 29, 1999, and several occasions thereafter.

3. The Department alleges the following violations:

3.1. Failure to Construct Secondary Containment for the Supernatant Tank. Respondents violated Health and Safety Code section 25189(b), California Code of Regulations, title 22, sections 66264.193(b) and 66264.193(c), and Permit Condition II.26, in that Respondents failed to provide secondary containment for the Supernatant tank within six months of the effective date of the Permit.

3.2. Acceptance of Wastes without Authorization. Respondents violated Health and Safety Code sections 25201(a) and 25202(a) and Permit Condition I.6.(b) in that on or about May 27, 1999, Respondents accepted, for storage, certain hazardous wastes the storage, treatment or disposal of which is not authorized by the Permit.

3.3. False Representation for Acceptance of Hazardous Wastes. Respondents violated Health and Safety Code sections 25189.2(a), 25201(a) and 25202(a), and Permit Condition I.6.(b) in that on or about May 27, 1999, Respondents misrepresented themselves to generators and on hazardous waste manifests as being

authorized to accept for treatment, storage and/or disposal hazardous wastes that are not authorized by the Permit.

3.4. Transportation to an Unauthorized Facility. Respondents violated Health and Safety Code sections 25162(a)(1), 25201(a) and 25202(a), and California Code of Regulations, title 22, section 66263.23(b) in that on or about May 27, 1999, Respondents transported hazardous wastes, not authorized under the Permit, to their own facility.

3.5. Failure to Maintain an Operating Records for Treatment and Storage of Hazardous Wastes. Respondents violated Health and Safety Code section 25102(a), Permit Condition I.6.(c) and California Code of Regulations, title 22, section 66264.73(b)(1) in that on or about May 27, 1999, Respondents failed to maintain operating records which include a description and quantity of each hazardous waste received, and the method(s) and date(s) of its transfer, treatment or storage.

3.6. Failure to Conduct Inspections and Maintain Facility Inspection Logs. Respondents violated Health and Safety Code section 25102(a), Permit Condition I.6.(c) and California Code of Regulations, title 22, section 66264.15 in that on or about May 27, 1999, Respondents failed to follow a written schedule for inspecting the facility and failed to record facility inspections in a log or summary.

3.7. Failure to Prepare Annual/Biennial Report. Respondents violated Health and Safety Code section 25102(a), Permit Condition I.6.(c) and California Code of Regulations, title 22, section 66264.75 in that on or about May 27, 1999, Respondents failed to prepare a biennial report by March 1, 1999 for hazardous wastes activities during 1998.

3.8. Storage of Hazardous Waste Without Authorization. Respondents violated Health and Safety Code section 25201(a) in that between July 8, 1999 and October 9, 2001, Respondents, as a transporter, stored manifested shipments of

hazardous waste during the course of transportation at an unauthorized location in excess of 10 days. Respondents stored 79 containers of hazardous waste manifested to another facility in excess of 10 days.

3.9. Transportation of Hazardous Waste Without Being a Registered Transporter. Respondents violated Health and Safety Code section 25163(a) and California Code of Regulations, title 22, section 66264.75 in that between July 31, 2000 and October 9, 2001, Respondents transported 118 shipments of hazardous waste without holding a valid registration issued by the department.

4. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

5. Jurisdiction exists pursuant to Health and Safety Code section 25187.

6. Respondents, and each of them, waive any right to a hearing in this matter.

7. This Consent Order shall constitute full settlement of the violations alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.

8. Respondents, and each of them, admit the violations described above.

SCHEDULE FOR COMPLIANCE

9. Respondents shall comply with the following:

9.1. Respondents have volunteered to complete closure of the Facility, supplementing the closure fund from their own resources as necessary. Respondents, and each of them, agree that upon DTSC's acceptance of closure certification for the Site, Respondents' Hazardous Waste Facility Permit will no longer be in effect and Respondents, and each of them, will then have no right, title or interest in, or to, any Hazardous Waste Facility Permit.

9.2.1. Restriction. During the period of time beginning on the effective date of this Consent Order and continuing uninterrupted thereafter for five years, Z. Max Lambrecht shall hold no ownership interest (legal, equitable, debt or beneficial) in any corporation, partnership, proprietorship, limited liability company, trust, or other business organization of any kind or description, that owns, rents, leases, supplies, operates, controls, manages, advises, consults with, supervises, or has any other business or legal relationship with any facility permitted by, or otherwise subject to regulation by, the California Department of Toxic Substances Control. Notwithstanding the foregoing, this Consent Order shall not be interpreted to prohibit Z. Max Lambrecht from being employed for wages by any such facility in any position subject to the following, such positions shall not be executive, managerial, or supervisory of any other employee and shall not include the authority to make or consult on any regulatory compliance or other policy matters.

9.2.2. Restriction. During the period of time beginning on the effective date of this Consent Order and continuing uninterrupted thereafter for five years, Zack Lambrecht shall hold no ownership interest (legal, equitable, debt or beneficial) in any corporation, partnership, proprietorship, limited liability company, trust, or other business organization of any kind or description, that owns, rents, leases, supplies, operates, controls, manages, advises, consults with, supervises, or has any other business or legal relationship with any facility permitted by, or otherwise subject to regulation by, the California Department of Toxic Substances Control. Notwithstanding the foregoing, this Consent Order shall not be interpreted to prohibit Zack Lambrecht from being employed for wages by any such facility in any position subject to the following, such positions shall not be executive, managerial, or supervisory of any other employee and shall not include the authority to make or consult on any regulatory compliance or other policy matters.

9.3. Submittals. All submittals from Respondents pursuant to this Order shall be sent to:

Mr. Paul S. Kewin, Unit Chief
Northern California Branch
Statewide Compliance Division
Department of Toxic Substances Control
8800 Cal Center Drive

Sacramento, California 95826

9.4. Communications. All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondents in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondents shall be construed to relieve Respondents of their obligation to obtain such formal approvals as may be required.

9.5. Department Review and Approval. If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may return the document to Respondents with recommended changes and a date by which Respondents must submit to the Department a revised document incorporating the recommended changes.

9.6. Compliance with Applicable Laws. Respondents shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

9.7. Endangerment during Implementation. In the event that the Department determines that any circumstances or activities (whether or not pursued in compliance with this Consent Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area

or to the environment, the Department may order Respondents to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

9.8. Liability. Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondents, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondents may be required to take further actions as are necessary to protect public health or welfare or the environment.

9.9. Site Access. Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondents in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary. Respondents shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order.

9.10. Sampling, Data, and Document Availability. Respondents shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondents or on Respondents' behalf in any way pertaining to work undertaken pursuant to this Consent Order. Respondents shall allow the Department and its authorized representatives to

take duplicates of any samples collected by Respondents pursuant to this Consent Order. Respondents shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Order. All such data, reports, and other documents shall be preserved by Respondents for a minimum of six years after the conclusion of all activities under this Consent Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondents shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondents shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order.

9.11. Government Liabilities. The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondents or related parties specified in paragraph 11.3, in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Respondents or their agents in carrying out activities pursuant to this Consent Order.

9.12. Incorporation of Plans and Reports. All plans, schedules, and reports that require Department approval and are submitted by Respondents pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Department.

9.13. Extension Requests. If Respondents are unable to perform any activity or submit any document within the time required under this Consent Order, the Respondents may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

9.14. Extension Approvals. If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

PAYMENTS

10.1. The Respondents and the Department agree that Respondents' penalty, jointly and severally, shall be \$194,660.

10.2. Respondents, jointly and severally, shall pay the sum of \$5,000 within 30 days of the effective date of this Order.

10.3. In the event that Respondents do not comply with the provisions of paragraph 10.2 above, payment of the penalty set forth at paragraph 10.1 above is due, without further notice, in full within 60 days of the effective date of this Order.

10.4. If, on the date which shall be five years after the effective date of this Consent Order, Respondents, and each of them, shall have strictly complied with all of the requirements of this Consent Order and shall have paid all sums required to have been paid by that date pursuant to the terms and conditions of this Consent Order, all unpaid sums then due shall be forgiven.

10.5. If Respondents fail to have strictly complied with all of the requirements of this Consent Order and/or shall not have paid all sums required to have been paid by that date pursuant to the terms and conditions of this Consent Order, the total sum set forth at paragraph 10.1 above, with due credit for all sums paid, shall then be immediately due and owing. Respondents further agree to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

10.3. Respondents' check shall be made payable to Department of Toxic Substances Control, and shall be delivered together with the attached Payment

Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Mr. Paul S. Kewin, Unit Chief
Northern California Branch
Statewide Compliance Division
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826

Mr. James J. Grace, Esq.
Staff Counsel
Office of Legal Counsel and Criminal Investigations
Department of Toxic Substances Control
1001 I Street
Post Office Box 806

Sacramento, California 95812

OTHER PROVISIONS

11.1. Additional Actions. By agreeing to this Consent Order, the Department does not waive the right to take further actions within its jurisdiction involving either Respondents or the Site, except to the extent expressly provided in this Consent Order.

11.2. Penalties for Noncompliance. Failure to comply with the terms of this Consent Order may subject Respondents to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

11.3. Parties Bound. This Consent Order shall apply to and be binding upon Respondents and their officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

11.4. Effective Date. The effective date of this Consent Order is the date it is signed by the Department.

11.5. Integration. This Consent Order constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this Consent Order.

11.6. Compliance with Waste Discharge Requirements. Respondents shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board.

Dated: 2/6/03 (Original signed by Safe-way Chem & Equip. Co., Inc. aka Safe-Way Chem. Co.)
Safe-Way Chemical Company aka Safe-Way
Chemical Company, Inc.
Respondent

Dated: 2/6/03 (Original signed by Z. Max Lambrecht)
Z. Max Lambrecht, Individually and dba Safe-
Way Chemical Company, and as a general
partner of Safe-Way Chemical Company
Respondent

Dated: 2/6/03 (Original signed by Zack Lambrecht)
Zack Lambrecht, Individually and dba Safe-
Way Chemical Company, and as a general
partner of Safe-Way Chemical Company
Respondent

Dated: 2/11/03 (Original signed by Charlene Williams)
Charlene Williams, Chief
Northern California Branch
Statewide Compliance Division
Department of Toxic Substances Control